



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Argee Corporation

File: B-230165.3

Date: May 20, 1988

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### DIGEST

Agency properly determined not to correct bid containing discrepancy between arithmetic total of prices and total price indicated in bid where either price reasonably could have been intended. Solicitation provision providing that apparent errors in addition of lump-sum and extended prices shall be corrected is not applicable where the bid does not clearly indicate an apparent addition error.

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### DECISION

Argee Corporation protests the proposed award of a contract to Ball, Ball & Brosamer, Inc. (BBB) for the construction of the Waddell Pumping-Generating Plant in Arizona, under invitation for bids (IFB) No. 7-SI-30-05960/DC-7724, issued by the Bureau of Reclamation, Department of the Interior. Argee asserts that the Bureau improperly declined to permit it to correct an apparent mistake in its bid which, after correction, would have been the low responsive bid. We conclude that the agency reasonably declined correction of Argee's bid and, therefore, deny the protest.

While Argee's protest was pending in our Office, BBB filed a motion for injunctive relief in the United States District Court for the District of Arizona under Civil Action No. 88-0409-PHX-PGR. The bases for the suit, in which Argee has intervened, are substantially the same as those raised in Argee's protest. This decision responds to a court request for an expedited advisory opinion from our Office on Argee's protest.

The IFB called for bids on 137 items, in lump-sum subtotals for some items and unit and extended prices for other items, as well as a total bid for the construction project. Argee and BBB were two of the nine contractors that submitted bids in response to the IFB. When the bids were opened on

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January 28, 1988, BBB was announced as the apparent low bidder based on its bid of \$37,836,668. Argee submitted the second low bid in the amount of \$38,100,000. After bid opening, the bids were routinely checked for accuracy. The contracting officer discovered that Argee's bid contained a discrepancy between the total bid submitted for the entire project and the arithmetic total of the 137 line item prices in its bid. The correct arithmetic total of the line item prices listed in Argee's bid was \$37,555,000; if Argee's bid were corrected to reflect that total amount, Argee would displace BBB as the apparent low bidder. Argee was requested to verify its bid; it confirmed that its intended total bid was \$37,555,000. In accordance with Federal Acquisition Regulation (FAR) § 14.406-1 (FAC 84-12) and a provision of the IFB which stated that "[a]pparent errors in addition of lump-sum and extended prices shall be corrected," the contracting officer corrected Argee's bid to \$37,555,000, and a bid abstract was prepared reflecting Argee as the low bidder.

BBB filed a protest with our Office on February 5, 1988, against the correction of Argee's bid and the award of the contract to any bidder other than BBB. That protest was subsequently withdrawn by BBB on March 17, after it allegedly received assurances by Interior's Office of the Solicitor that Argee's bid could not be corrected to displace BBB as the low bidder. Argee filed its present protest on March 30, against the Bureau's determination not to permit correction of its bid.<sup>1/</sup>

Argee argues that the contracting officer's initial decision to correct Argee's error was proper. Argee contends that the contracting officer's and Argee's reliance on the arithmetic discrepancy clause to support correction was entirely appropriate. In its view, because of this clause, the bid was subject to only one interpretation, that is, the total bid was the correct sum of the line items, not the price inserted for the total bid.

The FAR provides that apparent clerical mistakes may be corrected by the contracting officer before award, such as

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<sup>1/</sup> BBB had also filed a motion for injunctive relief with the United States District Court for the District of Arizona on March 14, 1988. On March 18, BBB stipulated to the dismissal of that court case without prejudice. As a result of Argee's protest to our Office, BBB moved the court to reinstate its civil action, which is presently pending before the court.

the obvious misplacement of a decimal point, obviously incorrectly stated discounts or obvious mistakes in the designation of a unit. FAR § 14.406-2 (FAC 84-12). Additionally, the FAR provides for correction of other mistakes disclosed before award; however, if correction would result in displacing one or more lower bids, such a determination may not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and the bid itself. FAR § 14.406-3 (FAC 84-12).

These regulations permit correction where a discrepancy admits to only one reasonable interpretation, that is, ascertainable from the face of the bid in light of the government estimate, the range of other bids, or the contracting officer's logic or experience. See Hudgins Construction, Inc., B-213307, Nov. 15, 1983, 83-2 CPD ¶ 570. On the other hand, where a bid is reasonably susceptible of being interpreted as offering either one of two prices shown on its face, and only one of which is low, the bid must be rejected. See Broken Lance Enterprises, Inc., 57 Comp. Gen. 410 (1978), 78-1 CPD ¶ 279.

Here, there is no one obvious or apparent explanation for the discrepancy between the stated total and the true mathematical total of the 137 items composing Argee's bid. The difference between the stated total and the true total, \$545,000, does not suggest where a mistake might have been made. In our view, the discrepancy in Argee's bid could reasonably be attributable to either of two causes: (1) each of the 137 line items was stated correctly, but the items were incorrectly totaled, or (2) the stated total of the 137 line items was correct, but one or more of the line items was incorrectly stated. Argee's bid may reasonably be interpreted as intending either of two prices and the bid actually intended cannot be determined without the benefit of advice from the bidder.

This is particularly evident given the fact that we have identified large disparities between several of Argee's individual line item prices and the other eight competitors' bids and the government estimate for those items. This uncertainty as to whether a mistake may have occurred in a line item price, rather than in the addition of the stated line item prices, is compounded by the fact that Argee chose to use the "option method" of including a lump-sum amount for the solicitation's line item Nos. 25-40, instead of clearly delineating its individual prices for each of these items in its bid. Also, it cannot be said that Argee's stated bid total was so grossly out of line with either the

government's estimate for the project or the other eight competitors' bids as to be deemed patently erroneous. DeRalco, Inc., B-205120, May 6, 1982, 82-1 CPD ¶ 430. Thus, although a mistake is evident from Argee's bid, it is not possible to determine the nature of that mistake or the price Argee actually intended to bid.<sup>2/</sup>

In Armstrong & Armstrong, Inc. v. United States, 356 F. Supp. 514 (E.D. Wash. 1973), aff'd, 514 F. 2d 402 (9th Cir. 1975), a discrepancy existed between the sum stated as the total bid and the correct arithmetic total of the constituent items. The court concluded that an ambiguity existed as to whether the stated sum or the correct arithmetic sum was actually intended and that this ambiguity could not be resolved from the face of the bid. Although an error was apparent, the court found its nature and cause were obscure in that the government could not know from the face of the bid whether the error lay in one of the component items or in the summation. The court noted that correction in that case, as here, would have made the contractor the low bidder. The court concluded that correction was not warranted. We arrive at the same conclusion here.

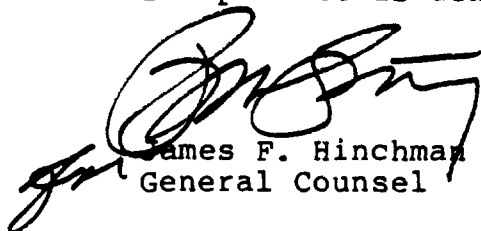
Argee relies upon our decisions in OTKM Construction, Inc., 64 Comp. Gen. 830 (1985), 85-2 CPD ¶ 273, and Patterson Pump Co.; Allis-Chalmers Corp., B-200165, B-200165.2, Dec. 31, 1980, 80-2 CPD ¶ 453, in which we upheld the agency's determination in each case to permit correction of a bid price discrepancy as an apparent clerical error. However, in both of these cases, unlike here, without reference to extrinsic evidence from the bidder, the bidder's intention was clear from the bid, that is, the bid was susceptible to

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2/ As stated above, the solicitation contains a provision permitting correction of apparent errors in the addition of lump-sum and extended prices. This clause permits correction only where it clearly appears from the face of the bid that the error is attributable to a simple error in the addition of the extended prices. Here, as indicated by the discussion above, it simply is not clear that there is an apparent addition error in Argee's bid; Argee's bid for certain line items when compared to other bids and the government estimate suggest the error may be in one or more of the stated line item prices. See, e.g., Bill Strong Enterprises, B-200581, Mar. 6, 1981, 81-1 CPD ¶ 179; Value Precision, Inc., B-191563, Aug. 7, 1978, 78-2 CPD ¶ 97, in which we found inapplicable a similar clause concerning apparent errors in the extension of unit prices, where the bid was susceptible of two reasonable interpretations, only one of which would have been low.

only one reasonable interpretation. Thus, we find these cases distinguishable.

The protest is denied.

A handwritten signature in black ink, appearing to read "James F. Hinchman", is written over the typed name and title.

James F. Hinchman  
General Counsel